In The United States District Court
For The District of Delaware

James Hall
Plaintiff,
v.
David Holman, Deputy warden
Lawrence Megginson, And
Acting Deputy warden Clyde
Sayers
Defendants.

C.A. No. 04-1328-GMS
Jury Trial of twelve
Demanded

FILED
JAN 19 2006
U.S. DISTRICT COURT
DISTRICT OF DELAWARE

Plaintiffs responds in support of his motion for Summary Judgment and Reply's to Defendants Motion in Support of their motion for Dismissal And Answer to plaintiffs Motion for Summary Judgment.

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1) Come Now plaintiff James Hall pro-se and responds to Defendants Reply in support of their Motion to Dismiss And answer to plaintiffs Cross motion for Summary Judgment

As a matter of law Defendants have failed to Adequately Respond To plaintiffs Motion for Summary Judgment at all

Memorandum of Law

A party is entitled to Summary Judgment only when The Court concludes "That there is no Genuine issue of material fact and that the party is entitled to Judgment as a matter of law" see Fed. R. Civ. P. 56(c). The moving party (plaintiff) has met this initial burden. See Matsushita Elec Indus. Co v. Zenith Radio Corp; 475. U.S. 574, 586 n. 10 (1986). Once The moving party has carried its initial burden, The nonmoving party "must Come forward with specific facts showing that there is a Genuine issue for Trial, Id. at 587 "FACts that could Alter the outcome are 'material', and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue, is correct" Horowitz v. Fed. Kemper Life Assur. Co. 57. F. 3d 300, 302 n. 1 (3d cir 1995). If the nonmoving party fails To make a sufficient showing on an essential element of his case with respect to which he has the burden of proof the moving party has entitlement to Judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317. 322 (1986). Defendants' fail to allege that any genuine issue of material fact exist and fail to Address Plaintiff's Summary Judgment

2). In The instant Case there exist enough evidence To enable a Reasonable Jury to find for the Plaintiff on the factual issue of actual knowledge See Anderson v. Liberty Lobby. Inc. 477 U.S. 242, 249 (1986)

Specifically the necessary elements to plaintiff claim have been admitted by Defendants

3.) Consequently, plaintiff filed Admissions as part of discovery motion on or about October 26, 2005 and as a result of Defendants failure to deny and or respond accordingly to these Admission Defendants have admitted them. Plaintiff Subsequently filed a motion for Summary Judgment on or About December 16, 2005 based on these Admission (See exhibit A and Exhibit B. Defendants Admitted to All the essential elements of plaintiff's Claim

4). For example, Admitted: (1) to Item # 8

Defendants Clyde Sayers, David Holloran, Lawrence Megargee knew that plaintiff faced a substantial risk of harm and disregarded that risk by failing to take reasonable measure to abate it.

4.1) for example Admitted (2) to Item # 13 and Item # 14

Defendants were aware of this objectively intolerable risk of harm and subjectively disregarded it.

Defendants David Holloran, Lawrence Megargee knew the Subjectively deprivation was sufficiently serious and has acted with deliberate indifference in violation of the Eighth Amendment To the United States Constitution.

42) (3) Admitted Item # 11

Defendant David Holman, Clyde Sayers Cardone allegation. Defendants intentionally ignored and failed to respond to a particular known threat to plaintiff. That failing to Respond to Substantial risk of Serious harm. And plaintiff has Suffered unnessarily due to defendants deliberate indifference

Admitted (4) Item #16

43)

Plaintiff Submitted numerous Request over a Period of four-five 4-5 Months to be moved Laterally within the Same Security Level to another cell Defendants failed to Respond Reasonable has Resulted in Permanent injury to plaintiff

Admitted

That Defendants David Holman Et. Al. collectively, knew deliberate indifference to substantial risk of serious harm to an inmate amounts to cruel and unusual punishment in violation of the eighth amendment (see Exhibit A at Item # 9

Admitted

Defendant David Holman Et. Al, were required and failed to Take Reasonable Measures to guarantee the safety of inmate Defendant David Holman. Defendants conduct or lack of conduct demonstrates a knowing indifference to a substantial risk of serious harm to plaintiff See. Exhibit A at # 12

5.

Plaintiff's claim Requires the following elements a) a substantial Risk of harm b) officials knowledge of that Risk c) defendants failure to respond Reasonable to the Risk d) Causation, injury. plaintiff's Summary Judgment cites the aforementation admissions of which clearly meet these four elements, and as a matter of law plaintiff, s entitled to a Judgment in his favor based on the Admissions. Defendants make no effort whatsoever to deny or respond to Admissions and make no effort to answer or contest plaintiff's Summary Judgment. Moreover, Defendants, incredibly make an attempt to deny what they have - as a matter of law - already Admitted, and further attempt to cloud the, ssues with smoke and mirrors in what amounts to a response to their motion to dismiss plaintiff believes that Defendants motion, is legally Frivolous based on their failur to defeat plaintiff Summary Judgment; however, Assuming argendo plaintiff will nevertheless respond to defendants remaining frivolous averments to clarify their distortion of the facts.

6.) With Regards to Item #2 of defendants motion defendants claim is legally frivolous & factually incorrect [Specifically defendants stated: "plaintiff again claims the fracture of his "pinky finger" was a serious injury. While this injury may cause pain and discomfort, it can by no means be considered a serious injury"]

Memorandum of Law

The Supreme Court stated. A medical need is serious if it is "one that has been diagnosed by a physician as Requiring Treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctors attention" Monmouth County Corr. Institutional Inmates V. Lanzaro 834 F.2d 326, 347 (3d cir. 1987)

Defendants position that a broken hand is not a serious MEDical condition is simply absurd. plaintiff suffered a broken hand a) that Required treatment (b) that was so obvious that a lay person could easily recognize need for a doctor (c) The pain itself is a satisfactory cause of action with regards to a Subjective component of a Eighth amendment claim d) Adversely affects normal daily function plaintiff suffered from all four of these Subjective element

Moreover, Defendants Admitted to knowledge of plaintiffs Serious medical condition [e.g. Broken Right hand]

Admitted

Defendants David Holman, Lawrence Mcgonigan, Clyde Sayers. were also aware that plaintiff had a broken Hand at all times relevant to these claims and were deliberately indifferent to the plaintiff medical condition By Recklessly Disregarding plaintiff condition and failing to protect him from violence and threatened violence from cellmate See. Exhibit A # 28

Admitted

The Defendants: David Holman et al; Subjected plaintiff to violent assault., and Acknowledge. it is not part of the penalty that Criminal offenders should pay for their offences Against Society plaintiff has Sufficiently Alleged that he is incarcerated under conditions posing a Substantial risk of Serious harm As noted, plaintiff suffered from a broken hand and was Literally defenseless and defendants were aware of this fact and yet despite their knowledge they disregarded the Excessive risk to plaintiff health and Safety See Exhibit A # 29

1.) At Item # 2 [Defendant's Claim "The Supreme Court did not hold that prison officials should be able to read mail" at paragraph -7

and that "bickering" mean a serious risk of substantial harm. At paragraph -9

And used legal word such as "bickering," Arguing, problems and confrontation at paragraph -3 And that the letter plaintiff submitted to Defendants failed to put them on notice [i.e, knowledge of a substantial risk of harm] This is legally frivolous; factually incorrect it is legally frivolous because as stated above (See Exhibit # A1 #8 Defendants already Admitted it. It is further factually incorrect As follows: Defendants Characterization ignores the Record & Attempts to piece meal & take plaintiff's letters out of context, The letter addressed to Defendant Holman and Defendant Mayhugh needs to be read in context pursuant to Fed. ~~Rules of Evidence~~ and pro se pleading leniency under Haines V. Kerner 404 U.S. 519 (1972) This will allow a Reasonable inference of the Requisite knowledge and any Reasonable juror could find for plaintiff on this issue that a Imminent danger was present and that Defendants were deliberate indifference to plaintiff's health and Safety.

The Letter Addressed to Major Holman (Security Superintendent)

This Letter would Suggest. "Dear Sir/mrs. My Name is James Hall [placing Defendant on Notice of a particular threat of harm] Coming from one Inmate to another and Warning the Agressor Anthony Coffield Clarifying that previously plaintiff Submitted a Request to be Relocated. Because plaintiff went to the Tier officer Asked to be moved. Sargent Sullivan on this occassion Told plaintiff to Copped in major Holman this Letter Clearly offers A designation of specific inmate who represent a threat to plaintiff Moreover plaintiff places defendant Holman on notice that plaintiff Suffered from a broken right hand and plaintiff Clearly States ["I'm in no position to defend myself properly"] it's fair to say NO Reasonable person or jury would belive that plaintiff was refering to Defending himself from "words" it clear that plaintiff was afraid of his celmate As previously Stated "Inmates don't want to be called Snitches," despite this Letter plaintiff had to go To the officials plaintiff is pleading to defendant Holman who has the authority to move plaintiff cellmate within the same Security Level this Letter was in the possession of defendant Holman and he was actual knowledge of impending harm Easily preventable and Perfunctorily deny plaintiff (A Culpable Refusal, Conscious Refusal to prevent the pain inflicted upon plaintiff he simply failed to prevent it.

The letter to Lawrence Mcguigan

Is even more insane than the previously submitted letter to major Holman. this letter outlines several contacts with top level officials in regard to a specific threat of harm coming from one Inmate against another inmate this letter also offers a designation of specific inmate who represents a threat to all that a inmate named Anthony Coffield ("specifically plaintiff alleges in the letter Dear Sir previously I've submitted a letter to major Holman stating I'm having problems and confrontation from my cellie who is a problem Inmate".] this statement draws a reasonable inference of a hostile environment and an Imminent situation of danger clarifying that as a Potential victim and placing Defendant Mcguigan on notice of a substantial risk of serious harm the letter further contends that Hall was afraid of his inability to protect himself from attack. Because Plaintiff suffered from a fracture of his 5th metacarpal [i.e serious injury] that effected his daily activities Ever alone a fight the letter placing Defendant Mcguigan on notice of a specific Inmate who plaintiff felt strongly represents a threat to his safety. The fact that Hall wrote Deputy warden (Holman Supervisor) clearly demonstrates the necessity for intervention this cause for communication is well expressed and Requesting an investigation / consultation in Regards to plaintiffs Allegations demonstrates the level of urgency in response to the substantial risk of harm facing Hall the Response from Holman was not Reasonable and plaintiff explains in his complaint.

That while the altercation with plaintiff collarale escalated and became more violent (See compliant) page 2 paragraphs 8-9 the altercation were now physical. Intimidation (eg. pointing of a finger into the forehead or face of plaintiff. verbal threatening spitting in plaintiffs face") C (clearly plaintiff states "I've been back here dealing with this handycap which limits my ability to protect myself from attack and asking for a investigation To plaintiffs allegation. Any reasonable person or juror could conclude that Defendants David Holman, Lawrence Mcguigan, Clyde Sapp's had actual knowledge of a substantial risk of Serious harm the evidence showing that a pervasive and well documented and expressly noted by Defendant of an attack easily preventable that was longstanding from 2-24-04 to current the Deliberate indifference of Defendants David Holman et al during the instant circumstances and moreover Defendant was informed that Anthony Offield was found not guilty of Assaulting staff in what i believe The 1st degree and Glorifying this exoneration (See pg 3 paragraph 5 of defendants motion to Dismiss) the record indicates staff requested a consultation in regard to the matter forwarded to Lawrence Mcguigan Plaintiff in the letter is contemplating Criminal charges for fear the pervasive risk of harm would progress to an actual assault. which it did the Circumstances suggest that the defendants David Holman et al. Are being sued and was been exposed to information see Exhibit C and Exhibit D concerning the risk and thus must have known about it. This evidence is sufficient to permit a Trier of fact to find that defendants had actual knowledge of the risk.

8.) At Item 3 of Defendants claim that Plaintiff introduced unknown witnesses. This also is legally frivolous and a vain attempt to confuse the issue w/ smoke and mirrors. First it's legally frivolous because at the complaint stage a Plaintiff doesn't need to prove his claim with any evidence. Thus no excuse is necessary at the complaint stage. Evidence in opposition to a Motion to Dismiss is appropriate at this juncture and not before. At complaint stage Moreover, Defendant shamelessly allude that Plaintiff held back evidence and they try to insinuate that the Plaintiff has created phantom witnesses, but this is their smoke & mirrors. Exposed to light, it quickly dissipates and becomes clear. The Letters to Defendants are referring to the two "Notices" (i.e. a warning of a substantial and persuasive risk of serious harm) that Plaintiff submitted prior to the assault. Exhibit C and Exhibit D However, Charles Daley is a witness to the actual assault as are all the other witnesses

Daley & other witnesses do not reference events prior to the date of the two letters (i.e. are after 2-24-04, 3-30-04). They do reference events thereafter and the actual assault. Therefore, these witnesses are not provided to establish the element of Defendants knowledge, but to go to Causation (i.e. that Plaintiff was actually assaulted)

Plaintiff did indicate in his motion for appointment of counsel (attached as Exhibit E) "that Inmates in nearby cells are witnesses, but obtaining Affidavits will require the assistance of counsel, informing Defendants of potential witnesses. It is incredible that defendants would try to fault plaintiff for according to their perception not providing those witness statements earlier, but also opposed his request for appointment of counsel. plaintiff specifically outlined the difficulty in obtaining these witness statements.

9). At Item # 4 Defendants Repeatedly account. that plaintiff was attacked and suffered the loss of a tooth on 3-9-04 is factually incorrect

for example

plaintiff's grammatical Error in not inserting punctuation where needed was been amended to correct this Deficie plaintiff's amended complaint page 2 paragraph 7-8 ☒ ☒ on 3.9.04

In addition, plaintiff made Subsequent references to the actual date of Assault & resulting permanent injury (e.g. tooth loss) on Some Eleven occasions

[See Original Complaint page 3

[See plaintiff answer to Defendant motion to Dismiss Four time on page 6, once on page 10

[See Affidavit of Spencer Hall once page 3

[See plaintiff motion for appointment of counsel Item 6 page 4, And the Record also Indicates the assault & permanent injury, which is all ignored. Defendants erroneously Seize upon a grammatical error in the Original. however corrected-complaint

and ignor the Great big white elephant in their living Room. Defendants lengthy diatribe is without merit.

10). Defendants claim at Item #5 that coffield presented no obvious warning signs to official regarding violence toward tellmales is Legally Frivolous and a conclusory allegation It is Legally Frivolous because Defendants omitted See Exhibit A Item #8 and plaintiff's two letters placed them on notice

This claim is also factually incorrect and is conclusory in view of the limited record. plaintiff strongly suspects that there is a lot more to inmate coffield institutional behavior record and his mental stability plaintiff did request additional records; mental health evaluation in his request for production of documents at Item #12

11). Item 6 of defendants Motion is Elaborate and wholly Immaterial Statement that evinces Defendants' Slight of the moral Knife. it is a character Assassination that is immaterial and in violation of Fed. R. Evid. plaintiff is not the accused here. Nor has he used any Substantial violations in his institutional File plaintiff's institutional Record is Flawless and plaintiff is a model Inmate with exceptional Rehabilitation and has enrolled in the Education programs. Defendant cannot attack plaintiff's character or habit to prove uncharged prior bad acts in an Understanded attempt to escape Liability

12). with Regards to Item #7

Defendants again Relush their strategy of cutting apart-Pro-se plaintiff's Letters of notice and take words out of co-text plaintiff established at Exhib A and exhibit B Above that (A Defendants admitted to having Actual knowledge of a Substantial risk of Serious harm 3 (B That a Reasonable Juror could infer that plaintiff faced a physical attack (risk of harm) that he could not defend against with his broken hand, furthermore, the "compatability" that plaintiff Speaks of is in Reference to an injunctive Relief that encourages Consideration of cellmate compatability. It clearly does not go to whether or not officials had Sufficient Knowledge

wherefore, all the Reason Stated herein and the Record plaintiff Request this Honorable Court To enter an order granting Summary Judgment or partial Summary Judgment if Appropriate in plaintiffs favor Deny Defendants's Motions and Appoint counsel to assist in negotiating plaintiff's damages & injunctive Relief

Date: January 17, 2006

James Hall

James Hall pro. se
1181 Paddock Rd Smyrna
19977

Certificate of Service

I, James Hall, hereby certify that I have served a true and correct cop(ies) of the attached: (1) Plaintiff's Response in Support of his Motion for Summary Judgment and Response to Defendant Motion upon the following parties/person (s):

TO: Gbe Bachi
Deputy Attorney General
820 N. French Street 6th Floor
Wilmington Del 19801

TO:

TO:

TO:

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 17 day of January, 2006

James Hall

Office of the Clerk
844 N. King Street, Lockbox 18
Wilmington, Del. 19801-3570

U.S.M.S.
X-RAY

Legal Mail

James Brown 10/351
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